

Testimony of the  
Council for Indigenous Art and Culture  
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Submitted to  
The United States Senate  
Committee on Indian Affairs  
Oversight Hearing  
on the  
Implementation of the American Indian Arts and Crafts Protection Act  
Public Law 101-644

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I am a Native American Indian artist from Isleta pueblo, a commercial trade consultant, in the Handcraft Sector for the United Nations International Trade Centre and the first American Indian president of the Indian Arts and Crafts Association (IACA).

The last ten years I have been working with several Indian arts organizations and Indian Tribes under the auspices of the IACA in the area of aboriginal arts and crafts preservation and legal protections. As time had passed myself and other devoted members of the IACA board had found it necessary to create a separate educational resource organization with a not for profit 501 c3 status in order to adequately address governmental and public sector art and cultural related legal and educational concerns. In 1997, I founded the Council for Indigenous Arts and Culture. The recently created Council for Indigenous Arts and Culture received its federal tax designation 501 c3 status in 1998. Since it's inception **CIAC** has undertaken projects that primarily center around Indigenous North American native communities and the difficulties that these communities are facing in trying to protect and preserve their native arts and culture, in the ever changing world around them.

I speak four different Indian languages and have worked professionally as an artist for the last 15 years. I come from a small American Indian community called Isleta Pueblo, located 13 miles south of Albuquerque, New Mexico.

For centuries, arts and handcrafts have played an important role in both the religious and social dichotomies of our Indian people. The images that you see in most all of the designs used in Native American arts and crafts are religious in nature. Even the hand fabrication process used in the creation of such works is often a reflection of an individual artisans relationship with tools that begin with a beating heart, mind and spirit. Our history ties us to this earth and our Creator is evident in most all you will see in the images of the cultural arts of the Native American artisan.

## **HISTORY: Case Example**

In Isleta Pueblo, over the last 50 years we have seen our artist population decline from 150 to 30 full time craftsmen and women. The most significant losses were in the late 1960's through the 1980's. Historically, we have been known for our fine coiled red clay pottery and fine old Spanish style jewelry. They are fast becoming a dying art. Unfair competition from import fakes and mechanically cast pottery and jewelry is now often being sold to the unsuspecting consumer as Indian handmade. This threat has made it almost impossible to compete fairly in the commercial market place. Forcing generations of potters and silversmiths to discontinue the trade. Which in turn essentially removes the next generation from having a chance to continue the tradition.

Currently, through our organization CIAC, we are networking with many American Indian tribes as well as Canadian aboriginal tribes in developing a certification trademark for each tribe to register with the US and or Canadian patents office. The purpose of the trademark is to develop an authenticating insignia. Which can be indelibly marked into the handmade products of each individual member of each respected tribal sovereign, hence authenticating an artist members work as being a genuine original deriving from the Indian nation as well as an individual member of that constituency. Currently, we are creating the interior protections policy for the trademarks usage, as well as specific policy and regulations for its use in commercial trade, in and out of their own tribal jurisdictions. ( \* For clarification of Trade mark distinctions see attached memo )

American Indian tribes involved in this project are trying their best under the circumstances to facilitate this new arts and crafts initiative. But, until recently most of them did not realize the magnitude of the problem, and finding funding sources with a limited government appropriated budget is almost impossible. We have found that grassroots needs assessment studies with direct community involvement has helped us tremendously at the local level in some communities. The concept of direct community involvement in economic development has made a big difference in the community's vision of itself. It works.

## **HISTORY : Statistical data**

In **1980**, the US Census / Bureau of Indian Affairs conducted a nation wide census survey of 554 American Indian tribes in the US. The purpose of the survey was help establish statistical data on native populations and economic conditions in Indian country. Included in this survey were the Indian tribal nations of Zuni with a population of 10,000, Hopi with a population of 13,000, Navajo with a population of 245,000 and

many river pueblo tribes of New Mexico with an average population of 3 to 5,000 each. This hand full of Indian tribes are noted as being the nations leading producers of hand-made Indian arts and crafts, both ethnic and contemporary in the current commercial market.

This census survey indicated in the above mentioned communities that there was an average of a **30% to 40% unemployment rate in 1980**. Also noteworthy is that up to **85%** of the families surveyed reported that arts and crafts were either a primary or secondary form of income. Industry experts with the Indian Arts and Crafts Association point out that the Indian arts and crafts industry was in a historical all time peak in the over all business in that general time frame.

In another US Census / Bureau of Indian Affairs census poll taken in **1990** these same tribes were found to report an **unemployment rate of between 50 and 65 %**.

In **1985**, a related survey done by the **US Department of Commerce** indicated that the Indian arts and crafts industry was estimated to be generating between \$700 and \$800 million dollars annually in gross revenue.

In **1997**, at an Indian Arts and Crafts Association sanctioned meeting held in Albuquerque, New Mexico, the **US Indian Arts and Crafts Board** indicated to a multi-tribal delegation, that the industry was generating well over \$1 Billion annually and growing.

	<b>1980</b>	<b>1990</b>
<b>Unemployment Rate:</b>	<b>35%</b>	<b>57.5%</b>
	<b>1985</b>	<b>1997</b>
<b>Industry Annual Gross Revenue:</b>	<b>\$ 750 million</b>	<b>\$ 1.2 Billion</b>

Industry statistics clearly indicate that the industry is growing, undoubtedly. The Indian Arts and Crafts Association reports that more businesses than ever are carrying American Indian style handcrafts and jewelry. The association has a mailing list of over 12,000 businesses. But, the unemployment rate and the gross revenue reports expose an interesting concept in supply and demand growth. The supply is growing, but, who is making the product?

The historical promotion and commercial successes derived from the sales of American Indian goods has also contributed to the onslaught of commercial imitations that have found their way into the market place both locally into Indian country, as well as the national level. We have also seen the growth of imitations beginning to takeover

a substantial portion of the international market.

Investigative reports from cities around the world such as Santa Fe, New Mexico, Los Angeles, California, New York, New York, Paris, France, Milan, Italy, Tokyo, Japan and Frankfurt, Germany indicate large quantities of fake arts and crafts being represented as authentic and original American Indian art works. The statistical data found in the surveys done by the US Census / Bureau of Indian affairs is yet to be analyzed by either tribal administrations or US governmental agencies. But, none the less the information has lead the way for the Council for Indigenous Arts and Culture to utilize the data as best as we are able.

The United States Customs Office reported to the CIAC that since 1990, countries such as the Philippines, Mexico, Thailand, Pakistan and China have been importing an average of \$30 million dollars annually combined in American Indian style arts and crafts. Although the US Customs agency stated that the dollar amount was an estimate not a fact, the numbers are quite significant nonetheless. Some of these items include jewelry, artifact reproductions, pottery, ethnic crafts and textiles.

### **Enforcement of Public Law 101-644**

New Mexico and Arizona provide the world market with roughly 80% of all commercial Indian hand-made goods. The CIAC has been working with law enforcement agencies in both US and State government agencies in combating the fraudulent sales of Indian arts and crafts in these regions. Recent investigations have uncovered that many businesses in these several states also participate in the multi-million dollar sales of fake Indian arts and crafts.

It is an important element within the CIAC's mission to promote national consumer education, as well as law enforcement education for Indian arts and crafts. Statistical information gathered from industry sources over the last five years indicate that up to 50% of all Indian arts and crafts sold in the United States may not be Indian handmade, by definition.

The federal regulation under the PL 101-644 does not offer explanatory definitions for method of creation but several states Indian arts and crafts statutes do. There are three definitions under those regulations. **Hand-made** which is defined as taking manual labor and raw material and producing a final product. **Hand-crafted** means to take pre-made parts and pieces and to manually assemble them to create a final product. And **Machine-made** means a product that is totally machine made.

### **Education**

The federal government and the State of New Mexico have Indian arts and crafts protections laws. The biggest problem has been a lack of education on their behalf.

CIAC research had found that these government agencies and their agents have not had an opportunity to be trained on how to identify Indian and or non-Indian products. In 1995, under the leadership of then IACA, president Mrs. Pam Phillips the IACA began the training process for agents, than in 1997, the CIAC continued the practice providing both classroom and field training for law enforcement agents. Included in this training are members of the NM and Arizona's Offices of the Attorney General, FBI, US Customs, Office of the Inspector General and World Customs agents.

## **US Customs**

The US Customs law, "1989 Omnibus Fair Trade Bill reg.19 CFR Sec. E 134.43 actually requires that any and all Indian style jewelry or crafts imported into the US **must were a country of origin stamp indelibly marked into each individual piece of jewelry or craft** entering US boundaries. The biggest down side to the law is that a loop hole was created in the language. Whereas the term under exceptions read, "Unless technically or commercially infeasible." The intent of the law is to force importer / manufacturers to mark their goods indelibly with the country of origin. As read in the law, *by die-stamping or otherwise permanently marking the goods as to country of origin*. Example, many manufacturers have found that by attaching to jewelry a small soldered wire( so called permanently attached) with a tag indicating the country of origin, US customs port inspectors allow the products to pass inspection ( There are over 330 ports of entry into the US.). After passing the customs port many unscrupulous importers and unethical arts and crafts dealers simply snip off the wire tags and begin to sell the goods as authentic American Indian art works.

Basic cost for goods deriving from products created in many foreign countries are often sold in the US at one fourth the cost of US production, because of low wages paid to workers in those countries.

Based upon the information acquired through the US customs service, the manufacturing of American Indian ethnic and contemporary arts and handcrafts has created an enhanced economy for many individuals of countries outside of the United States and Canada. Living in a free society American Indians hold no grudges against free enterprise or the jobs created by a successful industry. But, the key to successfully marketing any ethnic or commercially produced good regardless of what country you live in is to properly identify the individual producer and or the country as to where the good was produced. From the old saying "Give credit where credit is due."

## **Trademark Provisions**

Consumer Confidence is Key

Trademarks protect consumers by helping them make decisions in the marketplace for goods or services. The law of trademarks rests not alone on the property rights of the trademark owner, but in the right of the consuming public to be told the truth. Thus, in a trademark infringement lawsuit, a plaintiff acts as the vicarious avenger of consumer interests. At present, consumers of Indian Arts and Crafts are confused, not specifically as to whether an individual Indian artist created a work but rather as to whether the work in question is a genuine Indian work and not a cheap imitation.

Consumer confidence in Indian Arts and Crafts is perhaps at an all time low. Instances abound of consumers being misled as to the authenticity of a piece of art work. In general consumers are at a disadvantage vis-a-versa sellers because of their inability to judge the authenticity of a piece of Native art work. To date, a number of debates have taken place within Indian Country as to what form of trademark will best serve consumers in Navajo and in other Indian nations. The merits of regular trademarks, collective trademarks and certification trademarks have all been considered.

A regular trademark does not adequately resolve such consumer confidence issues; instead, a regular trademark typically resolves confusion as to a source, such as an individual artist or company. To perform this function, a regular trademark must identify a single source, not multiple sources. On this basis, a regular trademark is not the correct tool because many artists cannot fit squarely within the single source concept required by trademark law. A regular trademark works for franchises because every franchisee sells the same product, whereas, artists within an Indian nation do not.

### **A Certification Trademark**

Collective trademarks do not address the confidence problem either. According to the United States Patent and Trademark Office's Manual for Trademark Examining Procedure, if a collective trademark takes into account characteristics of a good, then it is properly classified as a certification trademark. Thus, to boost consumer confidence in the marketplace for Indian arts and crafts, a certification trademark is the correct tool.

### **Certification Trademark Project**

Indian nations are slowly learning the benefits of a certification trademark for certifying that goods are (i) made by a member of the Indian nation and (ii) that the goods are handmade. Again, the goal is to boost consumer confidence and to let them know when they are buying an authentic Indian handmade good.

This trademark when adopted by Native tribes will assist the industry as well as the tribes themselves in the authentication of the arts and crafts goods of their particular tribal members. Currently, the CIAC is assisting the Navajo nation, the Zuni nation, and the Hopi tribe in actively developing the **trademark initiative**. Although the focus of our efforts have been in these three primary art producing tribes, the river

pueblos of New Mexico are also heavily affected by the onslaught of fake arts and crafts in their market as well.

The certification trademark project considers that the Indian nation will own the trademark and an authority within the nation will administer the trademark. (Application forms for an artisan's use of a certification trademark have been drafted and enforcement issues have been taken under consideration.) The authority, however, cannot be involved in the sale or manufacture of goods to be certified, which adds an additional measure of confidence. Consider Underwriter's Laboratories for example. How would a consumer respond to UL certification if Underwriter's Laboratories manufactured and sold their own line of goods? With consumer confidence in the Indian arts and crafts market so low, this protective measure is well worth any additional administrative burden.

Overall, plans for executing a certification trademark project are at an advanced stage in Navajo and in the Pueblo of Zuni. Support from Federal and State governments would be greatly appreciated. However, it is imperative that the ownership and administration of the certification trademark be the responsibility and within the sole control of the Indian nation. Federal and State governments can help by supporting the trademark's administrative authority financially and through education. Federal and State governments can also help by working with the Indian nation's Department of Justice, especially in instances of certification trademark infringement.

#### Support a Certification Trademark Program

The Certification Trademark Project has been put together by Indian nations for Indian nations to address the root of economic harm in the market for authentic, handmade Indian arts and crafts. Whatever way the Federal government plans to help, it must support this mission and not dilute it. Furtherance of a program supporting individual trademarks for individual artists may dilute this effort; therefore, we ask that the United States Congress choose to support the certification trademark project only.

We further believe an opportunity exists for incorporating a certification trademark provision into the Indian Arts and Crafts Act. Such a provision may help clarify and strengthen the Act.